IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

	1:11cv70	
SYNOVUS BANK,)	
)	
Plaintiff,)	
)	
V.)	<u>ORDER</u>
)	
PHILSMITH L.L.C., et al.,)	
)	
Defendants)	
)	

Pending before the Court is Defendants' Motion to Amend Answer to Complaint [# 41]. Defendants seek leave of Court to amend their Answer in order to add factual allegations and to withdraw their cause of action for aiding and abetting. Plaintiff consents to the amendment. The Court **GRANTS** Defendants' Motion to Amend Answer to Complaint [# 41].

I. Analysis

Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleading after the expiration of the time periods specified in Rule 15(a)(1) "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Rule 15(a)(2) further provides that leave to amend shall be freely given "when justice so requires." Id. Absent a showing of undue delay, bad faith, futility, or prejudice to the opposing party, a court should grant a party leave to

amend. Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227 (1962); Equal Rights

Center v. Niles Bolton Assocs., 602 F.3d 597. The proposed amendment to

Defendants' Answer would not result in undue delay or prejudice to Plaintiff, and the amendment is not futile or made in bad faith. Accordingly, the Court

GRANTS Defendants' Motion to Amend Answer to Complaint [# 41].

II. Conclusion

The Court **GRANTS** Defendants' Motion to Amend Answer to Complaint [# 41]. Defendants shall file their Second Amended Answer by December 7, 2011. The Court **DENIES** as moot the Motion to Dismiss Amended Counterclaims [# 23], Motion to Strike Answer [# 28], and Motion to Dismiss Third Party Claims [# 32]. Plaintiff shall have twenty (20) days from the filing of the Second Amended Answer to answer or otherwise respond to any counterclaims or third-party claims asserted.

Signed: November 22, 2011

Dennis L. Howell

United States Magistrate Judge